* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 77 of 2007**

Judgment reserved on: July 11, 2007

% Judgment delivered on: July 13, 2007

Rajeev Tandon
D-404, Defence Colony
New Delhi ...Appellant

Through Mr. Krishan Mahajan, Adv.

Versus

Assistant Commissioner of Income Tax
Circle 31(3)
New Delhi ...Respondent

Through Mr. R.D. Jolly with
Mr. Vishnu Sharma, Advs.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Assessee is aggrieved by an order dated 8th September,

2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA No.3495(Del)/2004 relevant for the assessment year 2001-02.

2. The Assessee claims to have received two gifts from abroad. One gift was from Mr. P.B. Bhardwaj and was of an amount of Rs.30,04,300/- while the second gift was from Mr. Surender Khoka of an amount of Rs.4,61,942/-. The Assessee produced documentation to show the creditworthiness of both the donors but the Assessing Officer took the view that the gifts were bogus and that the Assessee had merely routed his own money through these persons to increase his capital for purchasing a house. The alleged gifts were given to the Assessee by persons who were not related to him in any manner and were not given to him for any particular reason except because he needed the money to purchase a house and these donors wanted to help him.

3. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] before whom he contended that the identity and creditworthiness of the donors had been established and consequently it was submitted that the Assessing Officer should not

have come to the conclusion that the gifts were bogus. The CIT (A) did not agree with the view canvassed by the Assessee and dismissed the appeal. Similarly, the Tribunal also dismissed the appeal of the Assessee and that is how we are required to deal with this appeal under Section 260A of the Income Tax Act, 1961.

4. Having heard learned counsel for the Assessee, we find that the Tribunal considered the entire case law on the subject including several decisions of the Supreme Court and this Court. Reference has been made to ***Commissioner of Income Tax v. Durga Prasad More, (1971) 82 ITR 540*** wherein the Supreme Court observed that the taxing authorities were entitled to look into the surrounding circumstances to find out the real and factual position. Similarly, this Court in ***Sajan Dass and Sons v. Commissioner of Income-tax, (2003) 264 ITR 435*** took the view that not only must the Assessee establish the identity of the donor and his capacity to make the gift, but he must also establish that the amount received by him was in fact a gift.

5. We find from the facts of this case that the two donors had

absolutely no connection with the Assessee and they made gifts to the Assessee only because he needed money to buy a house and they wanted to help him. It appears to us that this is not only quite unusual but also quite unnatural. It sounds rather incredible that a complete stranger would want to gift lakhs of rupees to a person only because that person wanted the amount for purchasing a house. The taxing authorities were entitled to look into the surrounding circumstances, which they did, and came to the conclusion that the gifts could not be said to be genuine. On these facts, we find no reason why a different view should be taken.

6. We may note that very recently, the Supreme Court dealt with a somewhat similar situation in ***Commissioner of Income-tax v. P. Mohanakala, (2007) 291 ITR 278***. While dealing with Section 68 of the Act, the Supreme Court held that:

(i) There has to be a credit of the amount in the books maintained by the assessee.

(ii) Such credit has to be of a sum during the previous year.

(iii) The assessee offers no explanation about the nature and source of such credit found in the books, or if the assessee offers an

explanation then, in the opinion of the Assessing Officer, it is not satisfactory it is only then that the sum so credited may be charged to income tax as the income of an Assessee.

7. The Supreme Court considered the expression "the assessee offers no explanation" and observed that what it means is that the Assessee offers no proper, reasonable and acceptable explanation in the opinion of the Assessing Officer, formed objectively with reference to the material available on record.

8. In so far as the present case is concerned, the explanation offered by the Assessee does not appear to be reasonable, much less acceptable. Consequently, we do not find any error in the view taken by the Tribunal. No substantial question of law arises for consideration. Dismissed.

Madan B. Lokur, J

July 13, 2007 **V.B. Gupta, J**
ncg